**HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI**
**AND**
**HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

**Writ Appeal No.560 OF 2007**

**Between:**

Boppuru Krishna Murthy

…. Appellant

**And**

The District Collector,
Nellore District, Nellore
and two others

… Respodnents

**:: JUDGMENT ::**

Counsel for the appellant : Shri Sricharan Teleprolu

**July 9, 2007**

**Per G.S. SINGHVI, CJ**

Having failed to persuade the learned Single Judge to nullify order

dated 22.02.2007 vide which Tahasildar, Sangam Mandal, Nellore District (respondent No.3 herein) directed him to stop Aqua Culture/Prawn Culture over an area measuring Ac. 4.20 cents in Survey No.575 of Padamatipalem Village, Sangam Mandal, Nellore District, the appellant has preferred this appeal.

The appellant claims to be the owner of agricultural land measuring Ac.5.40 cents situated in Padamatipalem Village, Sangam Mandal. He obtained certificate dated 20.09.2003 from Assistant Director of Fisheries, Nellore that fresh water aqua culture does not come under the purview of Aqua Culture Authority and 'No Objection Certificate' dated Nil from Panchayat Secretary, Gram Panchayat Padamatipalem and started aqua culture in an area measuring Ac.4.20. Devarapalli Seshidar Reddy, a resident of Padamatipalem Village challenged the prawn culture activity of the appellant and his son Boppuru Suresh in Writ Petition No.24142 of 2006. The same was disposed of by the learned Single Judge on 20.11.2006 by directing the official respondents to take action keeping in view the judgment of the Division Bench of this Court in **Madireddy Padma Rambabu v. District Forest Officer, Kakinada**[1].

In compliance of the direction given by the Court, Mandal Revenue Officer, Sangam (now Tahasildar) issued notice dated 10.01.2007 to the appellant to show cause as to why action may not be taken against him for undertaking aqua culture activity by encroaching land measuring Acs.4.20 cents in Survey No.575. The appellant sent reply dated 19.01.2007 through his advocate and denied the allegation of encroachment. He also claimed that the land in question belongs to him and he has undertaken aqua culture after obtaining no objection from the Gram Panchayat. This was followed by

notice dated 19.02.2007 vide which Mandal Revenue Officer, Sangam (now Tahasildar, Sangam) called upon the appellant to stop aqua culture operation by pointing out that his activity was violative of Section 35(2) of the Andhra Pradesh Water, Land and Trees Act, 2002 (for short, 'the 2002 Act'). In the reply sent by him through the advocate, the appellant claimed that the provisions of the 2002 Act are not applicable to fresh water aqua culture. Respondent No.3 rejected the reply and passed order dated 22.02.2007, whereby the appellant was directed to stop aqua culture and restore the land to its original status.

The learned Single Judge referred to the judgment of the Supreme Court in **S. Jagannath v. Union of India**[2] and of the Division Bench of this Court in **Madireddy Padma Rambabu v. District Forest Officer, Kakinada** (supra) and held that respondent No.3 did not commit any illegality by directing the appellant to stop aqua culture, which the latter had started without obtaining prior permission from the competent authority.

Shri Sricharan Teleprolu strongly relied on certificate dated 20.09.2003 issued by Assistant Director of Fisheries, Nellore and argued that no permission is required to be taken from Aqua Culture Authority for fresh water aqua culture (scampy) and that the learned Single Judge committed an error by refusing to nullify order passed by respondent No.3. Learned counsel emphasized that the judgment of the Division Bench in **Madireddy Padma Rambabu's** case (supra) is not applicable to fresh water aqua culture and respondent No.3 committed a serious illegality by restraining the appellant from carrying on aqua culture activity.

In our opinion, there is no merit in either of the contentions. A reading of certificate dated 20.09.2003 shows that the same has been issued by

someone under the seal of Assistant Director of Fisheries, Nellore without any reference or context. The appellant has neither pleaded nor any document has been produced before the Court to show that he had made an application to the competent authority for issue of 'No Objection Certificate' for undertaking aqua culture operation in Survey No.575. It has also not been shown that the Assistant Director has been authorized to issue such certificate. Therefore, certificate dated 20.09.2003 cannot be made basis for grant of a declaration that the appellant can undertake fresh water aqua culture operation without seeking permission from the competent authority.

The question whether aqua culture operation can be undertaken on agricultural land was considered by the Supreme Court in **S. Jagannath v. Union of India** (supra) and the following directions were issued:

> " 5. The farmers who are operating traditional and improved traditional systems of aquaculture may adopt improved technology for increased production, productivity and return with prior approval of the "authority" constituted by this order.
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> 6. The agricultural lands, salt pan lands, mangroves, wet lands, forest lands, land for village common purpose and the land meant for public purposes shall not be used/converted for construction of shrimp culture ponds.
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> 9. Aquaculture industry/shrimp culture industry/shrimp culture ponds other than traditional and improved traditional may be set up/constructed outside the coastal regulation zone as defined by the CRZ notification and outside 1000 meter of Chilka and Pulicat lakes with the prior approval of the authority as constituted by this Court. Such industries which are already operating in the said areas shall detain authorization from the "Authority" before April 30, 1997 failing which the industry concerned shall stoop functioning with effect from the said date. We further direct that any aquaculture activity including intensive and semi-intensive which has the effect of causing salinity of soil, or the drinking water or wells and/or by the

use of chemical reeds increases shrimp or prawn production with consequent increase in sedimentation which, on putrefaction is a potential health hazard, apart from causing siltation turbidity of water courses and estuaries with detrimental implication on local fauna and flora shall not be allowed by the aforesaid Authority."

In **Madireddy Padma Rambabu v. District Forest Officer, Kakinada** (supra), the Division Bench referred to the judgments of the Supreme Court in **S. Jagannath's case** (supra), **Gopi Aqua Farms v. Union of India**[3], **Indian Council for Enviro-Legal Action v. Union of India**[4], **A.P. Pollution Control Board v. Prof.M.V. Nayudu**[5], **A.P. Pollution Control Board –II v. M.V. Nayudu**[6], **M.C. Mehta v. Kamal Nath**[7] and **U.P. Pollution Control Board v. Mohan Meakins Limited**[8] and approved the judgment of the learned Single Judge in K**.R. Krisianaiah v. Mandal Executive Magistrate and MRO, Muthukur**[9]**,** wherein it was held as under:

" The existence of the tank and ayakut thereunder is not in dispute. May be the aquaculturists are the owners of some extents of the lands situated in the tank bed. May be they were doing aquaculture whenever the lands were available for such cultivation. May be the aquaculturist has right to use the lands for agricultural purpose whenever such lands remain free from submergence. But the question that would arise for consideration is as to whether the aqua culturists can be allowed to indulge in any act, which may prove disastrous and detrimental to the legitimate interest of farmers whose lands are included in the ayacut of Krishnapatnam tank. The agrticulturists are asserting their right to receive unpolluted and sufficient quantity of water from Krishnapatnam tank for agricultural purposes. It is a case of aquaculture versus agriculture. In Jagannath's case (supra) the Supreme Court approved the positive

findings of the NEERI that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of aquaculture produce. The Supreme Court also noticed the deterioration of ground water quality land the contamination of the soil itself in the villages over one km away from the pond site. Yet unmindful of consequence the mechanized and intensive aquaculture practice continues in some parts of the State. In the instant case, the tank bed land of a public irrigation source is sought to be converted into fish/shrimp ponds. The attempt of such conversion is resisted by the farmers and rightly so."

The Division Bench then noticed the provisions of the Environment (Protection) Act, 1986, the guidelines issued by the Aquaculture Authority, Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying and held:

" It has not been disputed that for the purpose of carrying out the said activities deep borewells had been dug, extensive use whereof had in various cases led to salination of the ground water. It has also not been disputed that by reason of such extensive prawn culture or aquaculture, the surrounding agricultural lands had become for all practical purposes useless for cultivation of paddy and other crops. The salinated fish tank water oozes through soil pores to the adjacent land where crops are raised and thereby the adjacent land gets damaged. The extensive use of the fish tank bed as aquaculture etc. will completely convert the adjacent land uncultivable after some years due to percolation of polluted water from the fish tank. There are also some cases in the area in or around Kolleru Lake. The directions contained herein as also the conclusions reached would govern such lands."

In our opinion, the judgment of the Division Bench is a complete answer to the appellant's plea that the prohibition imposed by the Courts in **S. Jagannath's case** (supra) and **Madireddy Padma Rambabu's case** (supra) does not apply to fresh water aqua culture. Therefore, we do not see any

reason to interfere with the direction given by respondent No.3 to the appellant to stop aqua/prawn culture operation in the agricultural land situated in Survey No.575, Padamatipalem Village, Sangam Mandal, Nellore District.

In the result, the appeal is dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P.No.1091 of 2007 filed by the appellant for interim relief is also dismissed.

**G.S. SINGHVI, CJ**

**C.V. NAGARJUNA REDDY,J**

July 9, 2007
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[1] 2002 (1) ALD 728 (DB)
[2] AIR 1997 SC 811
[3] AIR 1997 SC 3519
[4] (1996) 5 SCC 281
[5] (1999) 2 SCC 718
[6] (2001) 2 SCC 62
[7] AIR 2000 SC 1997
[8] (2000) 3 SCC 745
[9] 2001 (2) ALD 642